

ALCOHOLIC BEVERAGES DIVISION[185]

Adopted and Filed

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby amends Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits,” Iowa Administrative Code.

This amendment adopts new rule 185—4.5(123), which establishes guidelines for liquor control license holders to mix, store, and dispense mixed drinks or cocktails which are not for immediate consumption on a licensed premises, subject to and mandated by 2012 Iowa Acts, House File 2465, section 22, and pursuant to rules adopted by the Alcoholic Beverages Division. This amendment is necessary to:

- Establish the requirements for mixing, storing, dispensing, and disposing of mixed drinks or cocktails that are not for immediate consumption,
- Establish labeling and reporting requirements,
- Establish that certain ingredients are prohibited, and
- Establish that a licensee who mixes, stores, and dispenses mixed drinks or cocktails that are not for immediate consumption shall comply with all applicable state and federal alcohol and food safety laws.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on July 11, 2012, as **ARC 0205C**. This amendment was also Adopted and Filed Emergency as **ARC 0204C** and published on the same date. A public hearing was held on August 2, 2012, at the offices of the Division. The sole commenter expressed displeasure with the 72-hour time period that licensees are allowed to mix, store, and dispense a mixed drink or cocktail not for immediate consumption; concern that the time period may be extended in the future; and belief that a special license should be required in order to conduct the process.

Upon further internal review, the Division made changes to the new rule as published under Notice of Intended Action and Adopted and Filed Emergency to eliminate redundant or unnecessary language and clarify intent for the reader. Specifically, changes have been made to the following: The introductory paragraph of rule 185—4.5(123) has been changed to incorporate the allowable length of time for which a mixed drink or cocktail can be mixed, stored, and dispensed when it is not for immediate consumption; subparagraph 4.5(5)“b”(1) has been eliminated in its entirety, and the subsequent subparagraphs have been renumbered; renumbered subparagraph 4.5(5)“b”(9) has been changed to specify the label requirements for a container when the entire contents of the container have been transferred to a pourable container; renumbered subparagraph 4.5(5)“b”(10) has been changed to clarify the treatment of a used label; renumbered subparagraph 4.5(5)“b”(11) has been changed to clarify when a label is required to be applied to a container; paragraph 4.5(6)“c” has been changed to mirror the exact language in Iowa Code section 123.49(2)“d” as amended by 2012 Iowa Acts, House File 2465, section 22; paragraph 4.5(7)“a” has been changed to clarify that any mixed drink or cocktail remaining after 72 hours is expired; minor grammatical changes have been made to subrule 4.5(8) to improve readability; and subrule 4.5(9) has been rewritten to eliminate paragraph 4.5(9)“a” in its entirety since it pertained to a type of beverage which is not subject to the requirements and restrictions of this rule.

The Alcoholic Beverages Commission adopted this rule on September 12, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code chapter 123 and 2012 Iowa Acts, House File 2465, section 22.

This amendment shall become effective on November 21, 2012, at which time the Adopted and Filed Emergency amendment is rescinded.

The following amendment is adopted.

Adopt the following new rule 185—4.5(123):

185—4.5(123) Mixed drinks or cocktails not for immediate consumption. An on-premises liquor control licensee may mix, store, and allow the consumption of mixed drinks or cocktails which are not

for immediate consumption for up to 72 hours, subject to the requirements and restrictions provided in 2012 Iowa Acts, House File 2465, section 22, and this rule.

4.5(1) Definitions.

a. Immediate consumption. For purposes of Iowa Code section 123.49(2) “d” as amended by 2012 Iowa Acts, House File 2465, section 22, and this rule, “immediate consumption” is defined as the compounding and fulfillment of a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

b. Mixed drink or cocktail. A mixed drink or cocktail is a beverage composed in whole or in part of alcoholic liquors, combined with other alcoholic beverages or nonalcoholic beverages or ingredients including but not limited to ice, water, soft drinks, or flavorings.

4.5(2) Location. Mixed drinks or cocktails which are not for immediate consumption shall be mixed, stored, and consumed on the liquor control licensed premises. Mixed drinks or cocktails shall not be removed from the licensed premises.

4.5(3) Quantity. A mixed drink or cocktail which is not for immediate consumption shall be mixed and stored in, and dispensed from, a labeled container in a quantity not to exceed three gallons.

4.5(4) Container. A mixed drink or cocktail which is not for immediate consumption shall at all times be in a container compliant with applicable state and federal food safety statutes and regulations.

a. The mixed drink or cocktail shall be mixed and remain stored in the same container.

b. The mixed drink or cocktail shall be removed from the stored container for one of the following dispensing purposes:

(1) To compound and fulfill a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

(2) For transfer into a pourable container. The pourable container shall have affixed a label compliant with subrule 4.5(5) displaying label information identical to that on the container from which the contents were poured. The expiration date and time shall not be extended by the transfer of product to a pourable container.

c. The mixed drink or cocktail may be strained into another container when each of the following conditions is met:

(1) The mixed drink or cocktail is returned without delay to the labeled container from which it was strained.

(2) The container and process are compliant with applicable state and federal food safety statutes and regulations.

d. An original package of alcoholic liquor as purchased from the division or an original package of wine shall not be used to mix, store, or dispense a mixed drink or cocktail, pursuant to Iowa Code section 123.49(2) “d” as amended by 2012 Iowa Acts, House File 2465, section 22, and section 123.49(2) “e.”

e. The mixed drink or cocktail shall not be mixed, stored, or dispensed from a container bearing an alcoholic beverage name brand.

4.5(5) Label. A label shall be placed on a container when the contents of the mixed drink or cocktail are placed into the empty container.

a. Contents are defined in subrule 4.5(6).

b. The label shall be subject to the following requirements and restrictions:

(1) The label shall be affixed to the container in a conspicuous place.

(2) The label shall legibly identify the month, day, and year the contents are placed into the empty container.

(3) The label shall legibly identify the time the contents were placed into the empty container. The time shall be reported to the minute utilizing the 12-hour clock, and include either the ante meridian (AM) or post meridian (PM) part of time.

(4) The label shall legibly identify the month, day, and year the contents expire.

(5) The label shall legibly identify the time the contents expire. The time shall be reported in the same manner as reported in subparagraph 4.5(5) “b”(4).

(6) The label shall legibly specify the title of the recipe used for the contents of the container.

(7) The label shall legibly identify the person who prepared the contents of the container.

(8) The label shall legibly identify the size of the batch within the container and be conspicuously marked with the words "CONTAINS ALCOHOL."

(9) The label shall be removed from the container once the entire contents have been consumed, transferred to a pourable container pursuant to subparagraph 4.5(4) "b"(2), or destroyed and disposed of in accordance with applicable law.

(10) A label shall not be reused, nor shall a removed label be reapplied to a container.

(11) A new label, subject to the requirements and restrictions of paragraph 4.5(5) "b," shall be placed on the container for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

c. A licensee may access a label template on the Web site of the division located at www.IowaABD.com.

4.5(6) Contents. Contents include alcoholic beverages, nonalcoholic ingredients, or combination thereof, which are not for immediate consumption.

a. A licensee is limited to utilizing alcoholic beverages in the mixed drink or cocktail which are authorized by the license.

b. A licensee shall utilize alcoholic beverages in the mixed drink or cocktail which are obtained as prescribed by Iowa Code chapter 123.

c. The added flavors and other nonbeverage ingredients of the mixed drink or cocktail shall not include hallucinogenic substances, added caffeine or added stimulants including but not limited to guarana, ginseng, and taurine, or a controlled substance as defined in Iowa Code section 124.401.

4.5(7) Disposal.

a. Any mixed drink or cocktail, or portion thereof, not consumed within 72 hours of the contents' being placed into the empty container is expired and shall be destroyed and disposed of in accordance with applicable law.

b. An expired mixed drink or cocktail which is not for immediate consumption shall not be:

(1) Added to an empty container and relabeled; or

(2) Added to another mixed drink or cocktail which is not for immediate consumption.

4.5(8) Records. A licensee shall maintain accurate and legible records for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

a. Records shall contain:

(1) The month, day, and year the contents are placed into the empty container.

(2) The time the contents are placed into the empty container. The time shall be reported in the same manner as reported in subparagraph 4.5(5) "b"(4).

(3) Each alcoholic beverage, including the brand and the amount, placed in the container. The amount of each alcoholic beverage shall be reported utilizing the metric system.

(4) Each nonalcoholic ingredient placed in the container.

(5) The recipe title and directions for preparing the contents of the container.

(6) The size of the batch.

(7) The identity of the person who prepared the contents of the container.

(8) The month, day, and year the contents of the container are destroyed and disposed of or entirely consumed.

(9) The time the contents of the container are destroyed and disposed of or entirely consumed. The time shall be reported in the same manner as reported in subparagraph 4.5(5) "b"(4).

(10) The method of destruction and disposal or shall specify that the entire contents were consumed.

(11) The identity of the person who destroyed and disposed of the contents, if the contents were not consumed.

b. A licensee may access record-keeping forms on the Web site of the division located at www.IowaABD.com, by sending a request by fax to (515)281-7375, or by sending a request by mail to Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021.

c. Records shall be maintained on the licensed premises for a period of three years and shall be open to inspection pursuant to Iowa Code section 123.30(1).

4.5(9) *Dispensing machines.* A dispensing machine which contains a mixed drink or cocktail with alcoholic beverages is subject to the requirements and restrictions of this rule.

4.5(10) *Food safety compliance.* A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable state and federal food safety statutes and regulations.

4.5(11) *Federal alcohol compliance.* A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable federal statutes and regulations. Prohibitions include but are not limited to processing with non-tax-paid alcoholic liquor, aging alcoholic liquor in barrels, heating alcoholic liquor, bottling alcoholic liquor, and refilling alcoholic liquor or wine bottles.

4.5(12) *Violations.* Failure to comply with the requirements and restrictions of this rule shall subject the licensee to the penalty provisions of Iowa Code section 123.39.

This rule is intended to implement Iowa Code subsection 123.49(2) as amended by 2012 Iowa Acts, House File 2465, section 22.

[Filed 9/28/12, effective 11/21/12]

[Published 10/17/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/12.